

**PT 05-20**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 04-PT-0007</b>
<b>v.</b>	)	
	)	<b>Tax Year 2003</b>
<b>ILLINOIS MASONIC HOME</b>	)	
	)	<b>Dept. Docket No. 03-70-12</b>
<b>Applicant</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; William J. Warmoth of Brainard Law Offices for Illinois Masonic Home.

Synopsis:

Illinois Masonic Home (“applicant”) and the Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the State of Illinois (“Grand Lodge”) filed an application for a property tax exemption for the year 2003 for three parcels of property located in Moultrie County. The Department of Revenue (“Department”) denied the application, and the applicant timely protested the denial.<sup>1</sup> The applicant operates a retirement home on the property, and the applicant alleges that the property qualifies for

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<sup>1</sup> The identification numbers for the three parcels at issue are 09-09-05-000-100, 09-09-04-000-102, and 09-09-04-000-105. Prior to the Department’s decision concerning the application for exemption, the applicant withdrew its request for an exemption concerning parcel number 09-09-04-000-102.

an exemption on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The parties have stipulated that the property is owned by a charitable organization. (Tr. pp. 12-13) The only issue presented at the hearing is whether the property is actually used exclusively for charitable purposes. This question was previously litigated in the case of Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the State of Illinois v. Board of Review of Moultrie County, 281 Ill. 480 (1917), and the Supreme Court found that the property was entitled to the exemption. The applicant, however, recently acquired additional housing and began an independent living program for its residents that did not exist when the Supreme Court issued its decision. The Department contends that the housing for the independent living program, which consists of apartments and duplexes, does not qualify for the exemption. The parties stipulated that the remaining buildings are exempt under the decision that was rendered in 1917. After reviewing the record, it is recommended that the property at issue is not entitled to the exemption.

FINDINGS OF FACT:

1. The Grand Lodge owns the property that is the subject of this case. The property is held for the use and benefit of the applicant. (Dept. Ex. #1)
2. The applicant is an Illinois not-for-profit corporation that provides housing and nursing care for elderly people on the property. The applicant is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service. (Dept. Ex. #1; Dept. Ex. #2)
3. Section 2 under Article II of the applicant's bylaws states as follows:  
"Consistent with the charitable purposes of this corporation and the charitable operation

of [the applicant], since its inception, [the applicant] shall be operated so as to provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for service that may from time to time be charged.” (Applicant's Ex. #4)

4. The Grand Lodge acquired possession of the property in 1901. Construction of the housing began in 1903. In 1904, the first residents were admitted to the applicant's home. (Dept. Ex. #1; Tr. p. 17)

5. Since 1904, the applicant has provided housing and care to qualified members of the Masonic fraternity and their relatives. In addition to residents affiliated with the Masonic fraternity, the applicant accepts “such other persons on such terms and conditions from the general public as the Board of Directors may from time to time prescribe.” The applicant began accepting applications from the general public on September 1, 2003. (Dept. Ex. #1; Tr. pp. 20-21, 34; Applicant's Ex. #3, Section C, p. 31)

6. The availability of the home is advertised to the Masonic members through a quarterly publication. The general public is aware of the home through commercials on local television. (Tr. pp. 48-50)

7. The applicant offers three types of living arrangements for its residents: sheltered care, nursing (intermediate) care, and independent living. (Tr. p. 20)

8. The applicant is licensed to provide sheltered care and intermediate care, which is nursing services that do not include skilled needs. The applicant must request a waiver from the Department of Public Health to provide for residents with skilled needs. (Tr. p. 76)

9. The independent living that the applicant provides for its residents includes duplex living in the Ashlar Estates Program and apartment living in the Hart and Miller Apartment Buildings. (Tr. p. 77)

10. The residents in the independent living program have access to all of the services that are available at the home, such as medical, religious, food and social activities. (Tr. pp. 78-79)

11. The applicant adopted the independent living program in order to allow its residents to “age in place.” As residents’ needs change through the aging process, they can make a transition into other programs on campus without having to leave the campus. The first apartments were opened in 1997. The applicant did not previously have an independent living program. (Tr. pp. 29-30, 37, 80-81)

12. The following residential buildings are located on the property:

- Hart Building, which has 15 apartments for the independent living program;
  - Miller Building, which has 12 apartments for the independent living program;
  - 10 Duplexes, which provide 20 living units for the independent living program;
  - Ladies Building, which has 72 licensed sheltered care beds;
  - Hospital Annex Building, which has 79 licensed intermediate care beds;
  - North East Annex Building, which has 79 licensed intermediate care beds;
  - Collins Building, which has 79 licensed intermediate care beds;
  - Administrator’s residence, which is used as an independent living unit for people who are waiting for one of the other independent living units to become available.
- (Dept. Ex. #2, Tr. p. 26)

13. There are several other buildings on the campus that are used for all of the residents for things such as activities for the residents, laundry, and storing maintenance supplies. (Dept. Ex. #2)

14. The parties have stipulated that all of the buildings and property at issue qualify for the exemption except for the following:

- Hart Building and the parking associated with the building, which have a total of 14,341 square feet;

- Miller Building and the parking associated with the building, which have a total of 9,413 square feet;

- 10 Duplexes and the land associated with the units, which have a total of 32,570 square feet; and

- Administrator's residence, breezeway, garage, and land associated with it, which have a total of 4,348 square feet. (Stip. #3, 4)

15. Since 1999, the applicant has admitted residents on a fee-for-service basis. Some residents admitted on the fee-for-service basis have exhausted their assets, and the applicant subsidizes their care under a program called the Endowment Assistance Program.<sup>2</sup> (Dept. Ex. #2, p. 45; Tr. pp. 19-20, 49)

16. If an individual has the ability to pay for their care, they are expected to pay for it. If they cannot, then they may apply for assistance from the Endowment Assistance Program. (Tr. pp. 20, 22)

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<sup>2</sup> Prior to 1999, the applicant admitted residents if they completely surrendered their assets. Some of the applicant's current residents are still under this financial arrangement. In 1999, the applicant changed its financial policies for two reasons: (1) the applicant's facility was being underutilized because applications for admission had decreased; and (2) the interest rates were falling and the applicant did not earn very much interest on its funds. (Tr. pp. 34, 45-47)

17. The Endowment Assistance Program is designed for individuals who do not have the ability to privately pay for their care. It supplements any income that a resident receives from Social Security or a private pension. (Tr. p. 22)

18. Money for the Endowment Assistance Program comes from an endowment that was already established by the applicant. (Tr. pp. 22-23)

19. The residents who live in the independent living units must enter into a contract with the applicant called a Life Right Agreement. Under this agreement, these residents must make an initial payment for the use of the unit, and they are entitled to a refund of a portion of the initial fee upon their death or termination of the contract. They also pay a monthly maintenance fee. (Dept. Ex. #2, pp. 45-46; Applicant's Ex. #3; Tr. pp. 35-36)

20. Before entering into the contract, the resident must complete an application for admission that requires detailed information concerning the resident's health and financial condition. (Applicant's Ex. #3)

21. A \$1,000 application fee must accompany an application to live in the apartments or duplexes. The fee secures a position on the waiting list for the unit requested. The fee is applied toward the deposit required upon signing an agreement for the unit. The total amount of the application fee is fully refundable if at any time, prior to signing an agreement, the individual chooses to withdraw from the waiting list or the application is not approved. (Applicant's Ex. #3)

22. Upon signing the Life Right Agreement, a 25% deposit of the initial fee is required. The balance of the amount owed is due and payable in full on the date that the individual takes occupancy of the unit or 60 days from the date of the Life Right

Agreement, whichever comes first. (Applicant's Ex. #3, Life Right Agreement, Section 1 (Conditions of Residency) ¶2)

23. The initial fee for the use of the duplexes ranges from \$106,000 to \$117,000. The monthly maintenance fee for the duplexes is \$375. (Applicant's Ex. #3; Tr. pp. 36-37)

24. The initial fee for the use of an apartment ranges from \$18,000 to \$82,500. The monthly maintenance fee for apartments in the Hart Building vary from \$326.00 to \$804.00 depending on single or double occupancy. The monthly fees for apartments in the Miller Building vary from \$410.00 to \$803.00 depending on single or double occupancy. (Dept. Ex. #2, pp. 29, 31; Applicant's Ex. #3; Tr. pp. 36-37)

25. The monthly maintenance fees for the duplexes and apartments cover the following expenses: all utilities, cable, basic phone service, social and recreational services and outings, lawn care and snow removal, one meal per day, bed linen service, housekeeping, basic transportation, garbage removal, and parking. (Dept. Ex. #2, pp. 29, 31)

26. The monthly maintenance fee is due in advance at the beginning of each month. In a double occupancy situation, an additional \$200 is added to the monthly fee for the second resident. (Applicant's Ex. #3)

27. When residents vacate their duplex, the refund of the initial fee, without interest, is as follows:

Month 1 to 12	95% of initial fee
Month 13 to 24	90% of initial fee
Month 25 and any time thereafter	80% of initial fee (Applicant's Ex. #3)

28. When residents vacate their apartment, the refund of the initial fee, without interest, is as follows:

0-12 months	90% of initial fee
13-30 months	75% of initial fee
31-60 months	65% of initial fee
Anytime after the 61 <sup>st</sup> month	55% of initial fee (Applicant's Ex. #3)

29. The list of eligibility requirements for living at the applicant's facility includes the following: "Must show evidence of financial and physical ability to reside in the level of service as applied for." (Applicant's Ex. #3, Section C, p. 30-31)

30. Under the Life Right Agreement, the resident has first priority to be admitted to the Nursing Care Center if needed. The Nursing Care Center is a unit of care in the applicant's facility where intermediate nursing care is offered. The Agreement further states as follows: "In the event the resident or the resident's spouse enters the Nursing Care Center and has insufficient funds to pay the cost of such care, the resident may remain in the unit by making a written request to the Administrator to pay for nursing care services from the guaranteed percentage of return from the Life Right Agreement. If or when the guaranteed percentage of return is exhausted, the resident must vacate the unit." (Applicant's Ex. #3, Life Right Agreement, General Agreement, ¶6)

31. The applicant's "Independent Apartment Program Rules and Regulations" provide in part as follows: "Without in any way qualifying our right to terminate the agreement, if the sole reason for non-payment is insufficient funds, we will review the matter with you. If you present to us facts which, in our opinion, justify special financial consideration, we will allow you admission to the Traditional Care Program where public or private assistance can be made available to you." (Applicant's Ex. #3, Financial Conditions, ¶4)



32. The applicant's "Independent Apartment Program Rules and Regulations" also provide in part as follows: "The [applicant] may terminate the agreement and transfer or discharge you with a thirty (30) day written notice, for one or more of the following reasons: \* \* \* you do not pay for items or services received by you \* \* \*." (Applicant's Ex. #3, Your Rights and Obligations, ¶8)

33. Under the applicant's "Terms and Conditions of Occupancy" for the apartments and duplexes, the applicant states that the terms of the agreement shall continue until one or more of the following events terminates the agreement: "\* \* \* You shall fail to pay your monthly service fee as set out [sic] in Section 4 of this document or other reasonable charges of [the applicant]. [The applicant] will not discharge a resident due to lack of funds providing the resident has not intentionally divested his or her funds. [The applicant] does have the right to reasonable [sic] accommodate the resident in another residential program available at [the applicant] where public or private assistance can be made available to the resident." (Applicant's Ex. #3, Terms and Conditions, ¶B)

34. The Life Right Agreement for the Independent Living Program provides in part as follows: "[The applicant] will not discharge a resident for lack of funds if the resident meets all conditions of occupancy and the financial solvency of [the applicant] is not threatened. [The applicant] has the right to request resident(s) to relocate to a residential program that allows for public or private financial assistance to be applied for in behalf of the resident." (Applicant's Ex. #3, Life Right Agreement, section 2, #3)

35. Residents in the independent living units may qualify for the Endowment Assistance Program if they exhaust their funds while living at the home, but they still must pay the initial fee. (Tr. pp. 37-38)

36. For the fiscal year ending August 31, 2003, the applicant received \$2,454,113 from services fees and revenue, which is income received from the residents of the home. This consisted of \$1,297,268 from life-term and endowment assisted residents (this is primarily the residents' social security and pension benefits); \$623,109 from private pay residents (these are the residents who are charged on a fee-for-service basis); \$327,987 from independent living residents (this consists of their monthly maintenance fees and amortization of their life-right fee); and miscellaneous service revenue of \$205,749. (Applicant's Ex. #5; Tr. pp. 59-60)

37. For the fiscal year ending August 31, 2003, the applicant's revenue from contributions and other support totaled \$1,785,939. This consisted of \$732,754 from Masonic Homes Endowment Fund and \$1,053,185 from bequests and contributions. (Applicant's Ex. #5; Tr. pp. 61-63)

38. For the fiscal year ending August 31, 2003, the applicant had net investment income of \$2,974,605 and other revenue of \$230,264. The investment income includes \$2,138,769 from the Endowment Fund. The applicant's total revenue for the year was \$7,444,921. (Applicant's Ex. #5; Tr. pp. 63-64)

39. For the fiscal year ending August 31, 2003, the applicant's income received from the residents of the home (\$2,454,113) was approximately 33% of its total revenue of \$7,444,921. The revenue from contributions (\$1,785,939) was approximately 24% of total revenue, and the income from investments (\$2,974,605) was approximately 40% of total revenue. (Applicant's Ex. #5)

40. For the fiscal year ending August 31, 2003, the applicant's expenses included \$7,886,091 for resident services and \$1,307,427 for management and general expenses. The applicant's total expenses were \$9,193,518. (Applicant's Ex. #5; Tr. p. 66)

41. For the fiscal year ending August 31, 2002, the applicant received \$2,516,724 from services fees and revenue. This consisted of \$1,989,305 from life-term and endowment assisted residents; \$266,075 from private pay residents; \$214,067 from independent living residents; and miscellaneous service revenue of \$47,277. (Applicant's Ex. #5)

42. For the fiscal year ending August 31, 2002, the applicant's revenue from contributions and other support totaled \$5,135,057. This consisted of \$2,471,019 from Masonic Homes Endowment Fund and \$2,664,038 from bequests and contributions. (Applicant's Ex. #5)

43. For the fiscal year ending August 31, 2002, the applicant had net investment income of \$1,251,691 and other revenue of \$325,597. The investment income includes \$2,610,860 from the Endowment Fund and a net unrealized loss of \$1,923,464. The applicant's total revenue for the year was \$9,229,069. (Applicant's Ex. #5)

44. For the fiscal year ending August 31, 2002, the applicant's income received from the residents of the home (\$2,516,724) was approximately 27% of its total revenue of \$9,229,069. The revenue from contributions (\$5,135,057) was approximately 56% of total revenue, and the income from investments (\$1,251,691) was approximately 14% of total revenue. (Applicant's Ex. #5)

45. For the fiscal year ending August 31, 2002, the applicant's expenses included \$8,399,135 for resident services and \$1,054,679 for management and general expenses. The applicant's total expenses were \$9,453,814. (Applicant's Ex. #5)

46. The applicant's audit report and tax return do not specifically breakdown the cost of operating the independent living units. (Tr. p. 70)

47. At the time that the Department initially reviewed the applicant's application, the applicant had 63 residents in the following independent living buildings: 19 in the Hart Building, 11 in the Miller Building, and 33 in the duplexes. The applicant had 125 residents in its licensed beds (i.e., sheltered and intermediate care) buildings: 28 in the Ladies Building (18 life care, 6 fee-for-service, and 4 endowment assistance), 48 in the Hospital Annex Building (38 life care, 9 fee-for-service, 1 endowment assistance), and 49 in the Collins Building (41 life care, 8 fee-for-service, and 0 endowment assistance). (Dept. Ex. #2, pp. 29-31)

48. On January 1, 2003, the applicant had 65 residents in its independent living program (31 in apartments and 34 in duplexes). The applicant had 134 residents in its licensed beds. (Tr. pp. 77-78)

49. On August 31, 2003, the applicant had 64 residents in its independent programs and 119 residents in its licensed beds. (Tr. p. 78)

50. The applicant currently has ten residents who are assisted in the Endowment Assistance Program. (Tr. p. 82)

#### CONCLUSIONS OF LAW:

The provision of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. \* \* \*. (35 ILCS 200/15-65(a)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156-57 (1968). If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1<sup>st</sup> Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (3<sup>rd</sup> Dist. 1987).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill.App.3d 225, 231 (2<sup>nd</sup> Dist. 1992).

In Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Supreme Court found that a retirement home that, *inter alia*, required its residents to pay an entrance fee and monthly service charge was not exempt. In reaching its decision, the court furnished guidelines to determine if the use to which property is being put is charitable. The court found that a charitable use includes some of the following factors:

(1) the use benefits an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) the organization has no capital, capital stock or shareholders and earns no profits or dividends; (3) the organization's funds are derived mainly from public and private charity; (4) charity is dispensed to all who need and apply for it and without obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; (5) the organization does not provide gain or profit in a private sense to any person connected with it; and (6) the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Id. at 156-57.

The Methodist Old Peoples Home court stated that the mere charging of fees did not necessarily disqualify the property from charitable use. The court found, however, that the following facts did not suggest charitable use: varying the charge on the basis of the size and desirability of the room; requiring applicants to be in good mental, emotional, and physical health and free of any communicable disease; failing to admit those who are unable to pay the required fee; having its main source of income from fees rather than donations; and having no legal obligation to keep and maintain anyone who becomes unable to fulfill his or her financial obligation or otherwise becomes sick or unmanageable.

The present case contains similar facts that are not indicative of a charitable purpose. In order to live in the independent units, the resident must initially pay a substantial fee that varies depending on the size and desirability of the unit. The residents must complete an application that shows that they have the financial and physical ability

to reside in the units. Despite a provision in its bylaws that indicates that the applicant will waive fees, the testimony revealed that the initial fee is not waived (Tr. pp. 37-38), and none of the residents in the independent living units receives assistance from the Endowment Assistance Program. The applicant does not have a legal obligation to keep anyone in the units, and once a resident is there, he or she may be removed from the unit and transferred to one of the traditional units for failure to pay the fees. The money used for the initial fee may be used to cover the expenses.

The applicant has argued that the income that it receives from its residents does not cover its expenses, and the applicant specifically argues that the income from the independent living units is less than the expenses related to those units. The applicant indicated, however, that it does not keep a separate accounting for the expenses related to the independent housing program. One of the accountants for the applicant testified that a study was done to determine whether the life right fees and monthly maintenance fees would cover the expenses. The accountants found that the rates and fees charged by the applicant would not cover their costs. (Tr. pp. 71-72) The applicant did not provide any documents concerning this study. Because the applicant has the burden of proving its entitlement to the exemption, verification is important to support this contention. The applicant has not presented clear and convincing evidence to show that the money received from the initial and monthly fees is not sufficient to support the independent living program.

Other cases concerning retirement homes contain facts similar to the present case that the courts considered in denying the exemption: Small v. Pangle 60 Ill.2d 510 (1975) (applicant admitted no one who was apparently unable to pay the substantial

monthly charges and never had a resident who was unable to pay the charges); Willows v. Munson, 43 Ill.2d 203 (1969) (no requirement that applicant admit any person it found unable to pay the entrance fee or monthly service charge); People ex rel. Nordlund v. Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (sizable admission fee, assignment of assets, and health requirements prevented exemption despite the fact that the applicant's assets were approximately 32% from residents and 68% from gifts and endowments); Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455 (2<sup>nd</sup> Dist. 1995) (applicant required a substantial fee based on the size of the unit and a showing of the ability to financially and physically reside there); and Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4<sup>th</sup> Dist. 1987) (fee for independent living units is split between a life-lease and a no-interest loan; residents are deprived of the use and the income earning ability of the loan portion, and they do not accrue equity in the units).

The evidence in this case indicates that a resident may not be admitted to the independent living program without paying a substantial initial fee, and nothing indicates that a person who could not pay the fee is living in the units. This does not support a finding that the primary use of the apartments and duplexes is charitable. Their primary use appears to be to provide housing to residents who can pay for it. Given the fact that all doubts must be resolved in favor of taxation, it must be found that the property is not exempt.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's property that is used for the independent living program, which totals 60,672 square feet, does not qualify



for the exemption. The parties have previously stipulated that the remainder of the property is exempt for the year 2003.

Linda Olivero  
Administrative Law Judge

Enter: April 26, 2005